

No. 05- 05-453 OCT 4 - 2005

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IN THE
Supreme Court of the United States

NORTHLAKE CHRISTIAN SCHOOL,

Petitioner,

v.

PAMELA L. PRESCOTT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Can a district court deprive parties to an ambiguous arbitration agreement of the Seventh Amendment right to have a jury determine whether they contractually expanded judicial review of a monetary arbitration award?

LIST OF PARTIES

The plaintiff-appellee in the Fifth Circuit Court of Appeals was Pamela L. Prescott, a Louisiana resident. The defendant-appellant was Northlake Christian School, a Louisiana nonprofit organization. The other defendants, Randy Bridges, Raymond S. Childress, David Diamond, John D. Fricke, James Elmer "Pete" Hendry, Robert D. Hutchinson, Jr., Boyd Leahy and Glenn P. Warner (all Louisiana residents), were dismissed during the course of an arbitration proceeding in 2002.

CORPORATE DISCLOSURE STATEMENT

Petitioner, Northlake Christian School, is a private, nonprofit organization with no parent corporation.

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OPINION BELOW

The initial opinion of the United States Court of Appeals for the Fifth Circuit is reported as *Prescott v. Northlake Christian School*, 369 F.3d 491 (5th Cir. 2004) ("*Prescott I*"). After further proceedings on remand, the United States District Court for the Eastern District of Louisiana rendered its decision reported at 2004 WL 2434997 (E.D. La. Oct 29, 2004) (No. 01-475), which the Fifth Circuit affirmed on July 8, 2005, as reported at 2005 WL 1604000 (not selected for publication in the Federal Reporter, No. 04-31182) ("*Prescott II*"). The opinion in *Prescott II* is the focus of this petition. See Appendix A.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

The Fifth Circuit's opinion was rendered on July 8, 2005. The petition for panel rehearing was denied on August 10, 2005. See Appendices A & D.

CONSTITUTIONAL PROVISION INVOLVED

The Seventh Amendment to the United States Constitution provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE

This is an employment case over which the district court had jurisdiction pursuant to 28 U.S.C. § 1331. Arbitration instituted after the filing of this suit resulted in a "somewhat dubious award" that "appears incompatible with Louisiana law" in the words of the Fifth Circuit.¹ The arbitrator awarded Pamela L. Prescott \$157,856.52 for breach of contract.² Northlake Christian School ("NCS") appealed.

In *Prescott I*, pursuant to its jurisdiction under 28 U.S.C. § 1291, the Fifth Circuit held that the arbitration agreement is ambiguous in regard to the intended scope of appellate review, based on various unresolved factual issues:

In a handwritten additional paragraph, NCS and Prescott agreed that "[n]o party waives appeal rights, if any, by signing this [arbitration] agreement." The district court concluded that this language merely preserved whatever appeal rights the MUAA already granted to the parties. This conclusion is far from self-evident. . . . [I]t can certainly be argued that by adding this language to a form contract that otherwise contained no provision concerning appeal of an arbitration

1. *Prescott I*, App. C at 39a & 41a n.2, citing *Barbe v. A. A. Harmon & Co.*, 94-2423 (La. App. 4 Cir. 1/17/98); 705 So.2d 1210, writs denied, 98-0526 & 98-0529 (La. 5/15/98), 719 So.2d 462 (standing for the proposition that there is no basis for damages under Louisiana law in this case).

2. *Id.* at 41a.

award, the parties here intended to expand the scope of judicial review.³

* * *

[I]t is also significant that the parties decided to permit "a court of law" to review written and oral communications (*i.e.*, the record evidence) from the arbitration; this modification of the contract's form language amplifies their apparent intent to expand the scope of judicial review. Reinforcing Prescott's apparent intention to preserve expanded appeal rights (it was her attorney who insisted upon these special conditions), Prescott had a court reporter transcribe the arbitration proceedings.

These contractual tidbits strongly suggest that the parties intended judicial review to be available beyond the normal narrow range of the FAA or MUAA.⁴

The Fifth Circuit remanded this case to the district court for a determination of "whether the parties' arbitration agreement contemplated expanded judicial review."⁵ This is a factual inquiry that goes directly to the making of the arbitration agreement. On remand, the district court denied

3. *Id.* at 47a-48a (referring to the Montana Uniform Arbitration Act).

4. *Id.* at 49a (referring to the Federal Arbitration Act and the Montana Uniform Arbitration Act).

5. *Id.* at 47a.

NCS' request for a jury trial, and once again confirmed the arbitration award.⁶ NCS appealed a second time.

In *Prescott II*, a different Fifth Circuit panel affirmed the district court's confirmation of the arbitration award, finding that the Seventh Amendment right to jury trial did not attach in this case because a motion to set aside an arbitration award was traditionally considered equitable in nature.⁷ The appellate court's jurisdiction over the second appeal was also based on 28 U.S.C. § 1291.

On July 22, 2005, NCS moved for panel rehearing on the jury trial issue, which the appellate court denied on August 10, 2005.

On August 12, 2005, NCS moved to stay the mandate pending the filing of a petition for a writ of certiorari in this Court, which the appellate court denied on August 18, 2005.

On August 22, 2005, NCS moved to recall the mandate and reconsider the motion to stay, which the appellate court has yet to determine in the aftermath of Hurricane Katrina.

6. Opinion of the United States District Court for the Eastern District of Louisiana, entered on October 29, 2004 (Appendix B).

7. *Prescott II*, App. A at 12a.

REASONS FOR GRANTING THE PETITION

This petition requests the exceptionally important determination of whether a district court can deprive parties to an ambiguous arbitration agreement of the Seventh Amendment right to have a jury determine whether they contractually expanded judicial review of a monetary arbitration award? The appellate court has decided this important question of federal law that has not been, but should be, settled by this Court, and the Fifth Circuit's decision conflicts with relevant decisions of this Court. Given the historical and fundamental nature of the constitutional question presented⁸ and the impact of the answer in the arbitration area,⁹ review is warranted.

8. See *Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565, 110 S.Ct. 1339, 1344-45, 108 L.Ed.2d 519 (1990) ("*Teamsters v. Terry*") ("Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.") (citation & internal quotations omitted); *Parsons v. Bedford, Breedlove & Robeson*, 28 U.S. 433, 446, 3 Pet. 433, 447, 7 L. Ed. 732 (1830) ("The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy.").

9. The primary function of the court in reviewing an arbitration award is to enforce the parties' arbitration agreement as it would other contracts. *First Options of Chicago v. Kaplan*, 514 U.S. 938, 947, 115 S. Ct. 1920, 1925, 131 L. Ed. 2d 985 (1995). Courts cannot single out arbitration agreements by applying special standards not applied to other contracts. Supreme Court precedent has stressed that arbitration agreements are to be interpreted and enforced in the

(Cont'd)